

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 208 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SURYODAYA CONSTRUCTION CO.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

SERVED BY RPAD - (N) for Petitioner

MR Mihir Joshi for MANISH R BHATT for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 15/04/98

ORAL JUDGEMENT

The Income-tax Appellate Tribunal has referred the following question for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessee was not entitled to investment allowance under section 32A of the Income-tax Act, 1961 ?"

2. The assessee claimed investment allowance on the cost of machinery on the basis that it fulfilled required conditions for the purpose of the claim. The I.T.O. however negatived the case holding that the construction and structural work did not come within the meaning of "articles or things". This decision was confirmed in the appeal on the basis that the assessee engaged in the business of construction of buildings was not eligible for investment allowance. The Tribunal also held that the assessee was not entitled to investment allowance as claimed. Similar question came to be considered by the Hon'ble Supreme Court in the case of C.I.T. vs. N.C.Buddharaja, reported in 204 ITR, 412 in which it was held that the assessee who had claimed investment allowance under section 32A of the Act on the actual cost of machinery and plant installed for the purpose of its business pertaining to construction of dams and canals claiming that it was an industrial undertaking and the machinery and plant were installed for the purpose of business of construction, manufacturing or production of any article or thing within the meaning of section 32A(2)(b)(iii) of the Act was not entitled to the allowance under section 32A of the Act because that provision did not comprehend within its ambit, construction of dams, road, bridge or canals or other similar constructions. In view of this settled legal position, we hold that the Tribunal was right in coming to the conclusion that the assessee was not entitled to investment allowance under section 32A of the Act. The question referred to this Court is therefore, answered in the affirmative against the assessee and in favour of the Revenue. The Reference stands disposed of accordingly with no order as to costs.

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